IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9020 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAJKUMAR @ RAJESH S/O. BHAVANISHANKAR MAHAVAR

Versus

COMMISSIONER OF POLICE

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Appearance:

1. Special Civil Application No. 9020 of 2002

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/02/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has

challenged his detention order dated 8.7.2002. By the impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(1) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "bootlegger" and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

#. Along with the detention order, the detenu was also served with the grounds of detention. In the said grounds, there is a reference of one criminal case, which is filed under the provisions of the Bombay Prohibition Act. It is alleged against the petitioner that, he is dealing in illicit liquor as well as he is dealing in Indian made foreign liquor. In the grounds of detention, the statements of certain witnesses have been recorded, who have stated that the petitioner is disturbing the peace in the area and, because of his illegal activities the atmosphere in the are is also disturbed.

#. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that, even though, the petitioner is in judicial custody at the relevant time, yet the detention order is passed against him. It is submitted that, the authority has not properly considered the fact that as to why still it is necessary to detain the petitioner by way of prevention detention when the petitioner is in judicial custody. For that purpose, learned advocate has relied upon the decision of the Apex Court in the case of Amritlal and other Vs. Union Government, reported in AIR 2000 SC 3675, wherein the Apex Court in paras 4, 5 and 6 observed as under.:

> "4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 CriLJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on

record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

5. It is this reasoning which the learned advocate contended that the High Court should have held to be completely erroneous in the matter of being the basis of an order of detention.

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is `likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the `likelihood of his moving an application for bail' which is different from `likelihood to be released on bail'. This reasoning, in our view, is not sufficient compliance with the requirements as laid down."

#. Mr.Pancholi, learned AGP, however, tried to justify the detention order even though the petitioner is in judicial custody. The detaining authority has merely stated that the petitioner is in judicial custody, but except stating the same, he has not stated anything further in any manner. The authority has stated that as a last resort, the petitioner is required to be detained by way of preventive detention. However, in my view, the authority was required to state as to on what basis, it has reached to the conclusion that the petitioner is required to be detained by way of preventive detention even though he is in judicial custody. In that view of

the matter and in view of the aforestated judgment of the Apex Court, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 8.7.2002 is quashed and set aside. The detenu Rajkumar @ Rajesh s/o Bhavanishankar Mahavar is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)
(pathan)